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*Attorneys for Gilmore Construction, LLC*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In re:	)	
	)	
Robert H. Seabrook Jr. and	)	CASE NO.: 13-14004-mkn
Sondra G. Seabrook	)	CHAPTER: 7
	)	
	)	
	)	Adv. Proceeding No.: 13-01122-MKN
GILMORE CONSTRUCTION, LLC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ROBERT H. SEABROOK, JR., AND	)	
SONDRA G. SEABROOK	)	
	)	
Defendants.	)	

**OPPOSITION TO APPLICATION TO EMPLOY THE LAW OFFICE OF  
TIMOTHY P. THOAMS, ESQ., AS COUNSEL FOR THE DEBTORS  
AND FOR COMPENSATION FROM THE ESTATE**

Gilmore Construction, LLC, by and through its attorneys, the law firm of McCullough, Perez & Associates, Ltd., hereby opposes the Application to Employ the Law Office of Timothy P. Thomas Esq., as Counsel for the Debtors and for Compensation from the Estate.

...

**POINTS AND AUTHORITIES**

The Seabrooks are seeking to circumvent a stipulation they entered for the protection of Creditor Gilmore Construction, LLC. The Seabrooks specifically agreed to freeze certain IRA accounts and agreed not to withdraw funds there from in order to assure Gilmore was protected in its ability to collect on an embezzlement claim.

In addition to the current motion, the Seabrooks filed a motion for a stay of the proceedings in which they cite that no prejudice will befall Gilmore Construction if a stay is issued because the accounts are frozen. Now the Seabrooks in one motion are claiming the accounts are frozen, to protect Gilmore; while also simultaneously seeking to dissipate those funds.

Gilmore Construction opposes the use of the frozen accounts as the source of payment for the Debtors' attorney as those funds were specifically frozen to protect Gilmore Construction's interests.

**FACTUAL BACKGROUND**

As the Court is aware, this case involves embezzlement by the Seabrooks to the tune of over \$600,000.00 from Gilmore Construction. Mrs. Seabrook was the internal controller for the company and Mr. Seabrook, then unknown to Gilmore Construction, was assigned by an outside accounting firm Houldsworth & Company to review Gilmore Construction's books. As has been repeatedly stated, Mr. Seabrook was the fox in charge of the hen house. He was in a position to cover up the embezzlement by Sondra Seabrook. The embezzlement was used to pay credit cards in the names of Robert and Sondra Seabrook.

Gilmore Construction sought a constructive trust against the retirement accounts of the Seabrooks. On July 29, 2013, at the outset of the adversarial proceedings, Gilmore Construction filed a motion for a temporary restraining order and preliminary injunction precluded Robert and

1 Sondra Seabrook from transferring assets. A copy of the motion, without exhibits, is attached as  
2 Exhibit "1" and is document No. 8 on file in the adversarial proceeding.

3 The motion provides a greater detail of the embezzlement by the Seabrooks. It also lists  
4 the Seabrooks' failure to disclose assets in their initial petition before the Bankruptcy Court.  
5 Multiple examples were provided including failure to identify employment benefits received,  
6 transfers of final paychecks into a retirement account in order to hide the money, failure to  
7 disclose corporate distributions in particular a wire transfer to a company owned by the  
8 Seabrooks. The motion for temporary restraining order and preliminary injunction further details  
9 the basis upon which the requested relief should be granted; citing the Nevada law regarding  
10 embezzlement, constructive trust and supporting arguments regarding the issuance of a  
11 preliminary injunction.  
12

13  
14 At the time of the filing of the motion for injunctive relief, the Debtors were represented  
15 by Carrie Hurtik. On August 6, 2013, a conversation was held between Ms. Hurtik and counsel  
16 for Gilmore Construction. The Seabrooks had not opposed the pending motion and agreed to the  
17 issuance of a preliminary injunction. A copy of the email to Ms. Hurtik is attached as Exhibit "2"  
18 which confirms the Seabrooks agreeing to an injunction precluding the liquidations of their  
19 assets; including what would otherwise be exempt assets. The order did not include funds they  
20 received from social security benefit or employment benefits.  
21

22 The next several communications the proposed stipulation was amended and a final  
23 stipulation and order was signed by the parties and submitted to the Court. A copy of the  
24 stipulation and order issued by the Court is attached as Exhibit "3." The purpose of the  
25 stipulation was to protect Gilmore Construction's ability to collect against the accounts based on  
26 applicable law. The Seabrooks agreed to protection of Gilmore Construction by issuance of the  
27 stipulated agreement. Prior to the current motion, the Seabrooks did not seek to circumvent the  
28

1 purpose of the stipulation and order. They had incurred attorney's fees and expenses since the  
2 issuance of the stipulated injunction. Now they seek to circumvent the protection afforded  
3 Gilmore Construction and are attempting to liquidate the assets which they agreed would not be  
4 done.

5 The Seabrooks were represented by counsel at the time they negotiated the stipulation and  
6 should not now be allowed to back out of the agreement. With that stipulation in place, Gilmore  
7 Construction was willing to enter extensive negotiations with the Seabrooks, which did not result  
8 in a resolution, but assured that protections existed for Gilmore given that the funds were at least  
9 in a frozen state. However, due to market fluctuations it is unknown what the current value of the  
10 assets would be.

11  
12 At the time the Seabrooks entered the stipulation, they were aware an adversarial  
13 proceeding was in place. They were aware that discovery would need to be done and defense of a  
14 trial would need to take place. With this knowledge in hand, they agreed to freeze the assets.  
15 Now over a year later they are seeking to undo the agreement they executed. The Court should  
16 not grant the request.

17  
18 The Seabrooks still receive social security benefits and are capable of paying their legal  
19 fees. The Seabrooks were able to post bond after being indicted. The Seabrooks at a "source  
20 hearing" regarding their bail, identified they both were capable of obtaining \$4,000 each, and will  
21 continue to pay the bail bonds company.

22  
23 While they are certainly entitled to obtain new counsel after the withdrawal of Ms. Hurtik,  
24 new counsel should not be allowed to reverse the agreement the Seabrooks entered at the outset  
25 of the litigation. Gilmore Construction has filed this opposition as to the use of the frozen assets  
26 for use of payment legal fees since the very purpose of the stipulation was to protect Gilmore  
27 Construction and now the Seabrooks are seeking to avoid the agreement they entered.  
28

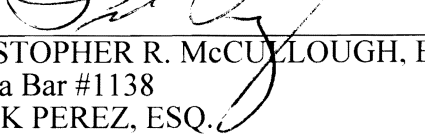
1 Notably, no other creditor may lay claim to the frozen assets. Furthermore, the Seabrooks  
2 are free to use other assets that are not subject to the stipulation. They own a property in  
3 Montana and a residence here in Las Vegas.

4 In conclusion, the assets that are subject to the stipulated order should not be made  
5 available to the Seabrooks. They have sufficient sources of funds to pay new counsel, as they  
6 have already demonstrated they are capable of raising the initial retainer and other funds when  
7 they need money.  
8

9 DATED this 8 day of October, 2014.

10 RESPECTFULLY SUBMITTED

11 McCULLOUGH, PEREZ & ASSOCIATES, LTD.

12  
13  
14 By   
15 CHRISTOPHER R. McCULLOUGH, ESQ.  
16 Nevada Bar #1138  
17 FRANK PEREZ, ESQ.  
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19 601 S. Rancho Drive, #A-10  
20 Las Vegas, Nevada 89106  
21 Attorneys for Plaintiff  
22 Gilmore Construction, LLC  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**


I HEREBY CERTIFY that service of the following OPPOSITION TO APPLICATION TO EMPLOY THE LAW OFFICE OF TIMOTHY P. THOMAS, ESQ. AS COUNSEL FOR THE DEBTORS AND FOR COMPENSATION FROM THE ESTATE.

Electronic service to the ECF service matrix and by depositing a true and correct copy of the above in a mailbox of the U.S. Post Office, enclosed in a sealed envelope, postage prepaid thereon, addressed to the following interested parties.

Timothy P. Thomas, Esq.  
Law Office of Timothy P. Thomas, LLC  
8670 W. Cheyenne Ave., Suite 120  
Las Vegas, NV 89129  
[tthomas@tthomaslaw.com](mailto:tthomas@tthomaslaw.com)  
Attorney for Debtors/Defendants

JOSEPH B. ATKINS  
3815 South Jones Blvd., #5  
Las Vegas, NV 89103  
[jbatkins@7trustee.net](mailto:jbatkins@7trustee.net)

Executed at Las Vegas, Nevada, on October 8, 2014.

  
Angie Gardner, employee of McCULLOUGH, PEREZ & ASSOCIATES, LTD.

# **EXHIBIT 1**

# **EXHIBIT 1**

CHRISTOPHER R. McCULLOUGH, ESQ.  
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*Attorneys for Gilmore Construction, LLC.*

**U.S. BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:

Robert H. Seabrook Jr. and  
Sondra G. Seabrook

)  
)  
) **BK CASE NO.: 13-14004-mkn**  
) **CHAPTER: 7**  
)  
) **ADVERSARY CASE NO.: 13-01122-mkn**  
)

GILMORE CONSTRUCTION, LLC.

Plaintiff,

v.

ROBERT H. SEABROOK, JR., AND  
SONDRA G. SEABROOK

Defendants.

**MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY  
INJUNCTION PRECLUDING ROBERT AND SONDRA SEABROOK FROM  
TRANSFERRING ASSETS**

Gilmore Construction, LLC. by and through its attorneys, the law firm of



1 McCullough, Perez and Associates, moves this court for a Temporary Restraining Order  
2 and Preliminary Injunction precluding Robert and Sondra Seabrook from transferring  
3 assets pending resolution of this matter. This motion is made pursuant to FRCP 65 and  
4 the Point and Authorities set forth herein.  
5

6 **I BACKGROUND**  
7

8 Gilmore Construction LLC is a licensed Nevada Contractor. Gilmore has been  
9 serving the Las Vegas Valley for over a decade, and its principal Larry Gilmore has been  
10 in the Las Vegas Construction industry for over 40 years. Gilmore Construction hired  
11 Sondra Seabrook to serve as its bookkeeper. Mrs. Seabrook was recommended by  
12 Gilmore Construction's accounting firm; Houldsworth, & Company, P.C. (Houldsworth).  
13 Gilmore's accountant Alan Houldsworth, recommended Ms. Seabrook, and assured  
14 Gilmore he would review her work.  
15

16 Co-Defendant Robert Seabrook was employed at Houldsworth as an accountant.  
17 Unknown to Gilmore Construction, Mr. Seabrook was assigned the task by Houldsworth  
18 to oversee his wife Sondra Seabrook's accounting of Gilmore's financial affairs. As  
19 things turned out, the fox was put in charge of the hen house.  
20

21 After being installed into a position of trust, Mrs. Seabrook began embezzling  
22 money from Gilmore. With her husband, and co-conspirator reviewing the books,  
23 Gilmore was never alerted to the embezzlement. Over the next several years, Mrs. and  
24 Mr. Seabrook embezzled over \$600,000 from Gilmore Construction.  
25

26 Mr. and Mrs. Seabrook would run up expenses on their personal credit cards.  
27 Charges ranged from trips to dogs shows, airfare, hotel, utilities for their residence,  
28

1 furniture for their children, payment of tuition for their children and various other  
2 expenses. Mrs. Seabrook would then cut a check from a Gilmore Construction account.  
3 She would list the expenditure under categories of legitimate expenses; such as workman  
4 compensation insurance.  
5

6 The work of Mrs. Seabrook would be then be reviewed by her husband Robert  
7 Seabrook. He helped to cover up the theft by keeping the impropriety secret. The lived a  
8 lavish lifestyle by spending Gilmore Construction's money. It was not the first time they  
9 stole money from an employer.  
10

11 In the 1980's Defendants embezzled funds from a local contractor (Jim Hammer)  
12 which was repaid under threat of prosecution. In order to pay back the stolen money, the  
13 Defendants obtained a loan from Gary G. Day (Exhibit "1" is a Motion for Partial  
14 Summary Judgment filed in the District Court of Clark County, Nevada. Exhibit "10" of  
15 the Motion is the Affidavit of Gary G. which sets forth the prior embezzlement) <sup>1</sup>.  
16

17 Then during the 1990's Defendant Sondra Seabrook was convicted in the United  
18 States District Court for the District of Nevada of embezzling funds from an employee  
19 benefit plan. (Case Number CR-S-92-194-PMP) (See Exhibit "1" the Motion for Partial  
20 Summary Judgment's Exhibits "1" and "1-A" are the Plea Agreement which reflects that  
21 the embezzled funds were paid to Defendant Robert Seabrook.)  
22

23 Gilmore Construction filed suit in the District Court of Clark County Nevada. A  
24 copy of the amended complaint is attached as Exhibit "2". The previously reference  
25  
26

27 <sup>1</sup> The checks and bank statements which are Exhibits 3, 4, 5, 6, 7 and 8 to the Motion for Partial  
28 Summary Judgment are not attached to this pleading. The Exhibits number several hundred  
pages. For brevity they have not been included.

1 motion for partial summary judgment was filed on March 22, 2013. The Seabrook's did  
2 not file a responsive pleading. A "Notice of Failure to Oppose" was filed on May 1,  
3 2013. A copy is attached as Exhibit "3". The hearing on the Motion for Partial Summary  
4 Judgment was scheduled for May 9, 2013. After failing to oppose the motion for  
5 summary judgment, the Seabrook's filed a Chapter 7 petition on May 7, 2013.<sup>2</sup>

7 Gilmore also filed a complaint in the state of Montana. A copy of the pleading is  
8 attached as Exhibit "4". The complaint sought to have a constructive trust placed upon a  
9 home the Seabrooks purchased in Montana. Gilmore alleges the embezzled funds were  
10 used to purchase the home. A motion for summary judgment was filed in that action as  
11 well. A copy of the motion is attached as Exhibit "5". The Seabrooks did not file an  
12 opposition to that motion either.

14 During creditor's meetings Gilmore Construction appeared and questioned the  
15 Seabrooks. On numerous questions the Seabrooks invoked their Fifth Amendment right  
16 against self incrimination. When asked if the allegations contained in the complaint filed  
17 in the State of Nevada were true, both invoked their Fifth Amendment right against self-  
18 incrimination. (cite to transcript)

20 During the creditors meeting the Seabrooks confirmed that certain assets were not  
21 disclosed in their initial petition. Some examples are;

- 23 1. Approximately \$20,000 dollars received when they sold a vehicle shortly  
24 before the petition was filed.
- 25 2. A final paycheck of \$17,000 from Houldsworth; which Mr. Seabrook

27 <sup>2</sup> Gilmore Construction also filed suit in Montana seeking to obtain a constructive trust on a home  
28 the Seabrook's purchased in Montana.

1 deposited into an IRA as a method of hiding the money.

2 3. Failed to disclose Mr. Seabrook is receiving unemployment benefits.

3 4. Failed to disclose \$4,500 in security deposits in a Reno apartment they share  
4 with their daughter.

5 5. Mr. Seabrook held multiple online gaming accounts; and used funds on  
6 deposit prior to their filing to make post petition bets.

7 6. Failed to disclose a \$3,500 cash gift to their daughter.

8 7. Failed to disclose a corporate distribution, specifically a wire transfer from  
9 Sealy Consulting directly to Mr. Seabrook.

10 8. Mrs. Seabrook confirmed she was receiving social security benefits, but  
11 failed to disclose simultaneously was receiving income from Gilmore  
12 Construction.

13  
14  
15  
16 Gilmore Construction commenced an adversarial proceeding on July 16, 2013.

17 The complaint seeks to determine the non- discharge ability of the debt owed to Gilmore.

18 The complaint also seeks to impose a constructive trust upon the Debtor's purported  
19 exempt assets.

20  
21 Under Nevada law a Constructive Trust arises when there is a confidential  
22 relationship between the parties, retention of legal title by the holder thereof against  
23 another would be inequitable and that the existence of such trust is essential to the  
24 effectuation of Justice. A confidential relationship existed between Gilmore and  
25 Defendants Seabrook in that Defendant Sondra Seabrook was Plaintiff's bookkeeper, and  
26 Defendant Robert Seabrook performed accounting services on behalf of Gilmore.

27 According to their Chapter 7 petition, the Seabrook claim to hold \$351,328.02 of  
28 exempt assets. However, but for the embezzlement of over \$600,000.00 of money from

1 Gilmore the Seabrooks would not had been able to acquire, establish or create the exempt  
2 assets as the funds used to create those assets would have been used for the payment of  
3 the Seabrook's expenses.

4 Retention of legal title of the purported exempt assets by the Seabrooks against  
5 Gilmore would be inequitable. The establishment of a Constructive Trust is essential to  
6 the effectuation of Justice. It assures Gilmore the ability to retrieve the embezzled funds,  
7 and precludes a windfall to the thieves. To do otherwise simply encourages an embezzler  
8 to use stolen funds to live a lifestyle beyond their means, then put their actual wages into  
9 exempt assts. The criminal can then claim the victim cannot touch the thieves' "money"  
10 because they are put into a traditionally exempt asset.

## 11 **II STANDARD FOR TEMPORARY RESTRAINING ORDER AND** 12 **PRELIMINARY INJUNCTION**

13 The court is empowered to temporarily restrain the Defendants from transferring  
14 any of their purportedly exempt assets during the pendency of this litigation.

15 "The same standard applies to both temporary restraining orders and  
16 to preliminary injunctions." Hall v. Johnson, 599 F.Supp.2d 1, 6 n. 2  
17 (D.D.C. 2009); Sterling Commercial Credit Michigan, LLC v. Phoenix  
Industries I, LLC, 762 F.Supp.2d 8 (D.D.C. 2011); Coalition for Parity, Inc.  
v. Sebelius, 709 F.Supp.2d 6 (D.D.C. 2010)

18 "A plaintiff seeking a preliminary injunction must establish that he is  
19 likely to succeed on the merits; that he is likely to suffer irreparable harm in  
20 the absence of preliminary relief, that the balance of equities tips in his  
21 favor, and that an injunction is in the public interest. Winter, Secretary of  
22 the Navy, et al. v. Natural Resources Defense Council, Inc., et al. 555 U.S.  
23 7,129 S.Ct. 365 (2008) citing to Munaf v. Geren, 553 U.S. 674 128 S.Ct.  
24 2207, 171 L.Ed.2d 1, Amoco Production Co. v. Gambell, 480 U. S. 531,  
542 (1987); Weinberger v. Romero-Barcelo, 456 U. S. 305, 311-312  
(1982).

### 25 **A. Gilmore is likely to succeed on the merits.**

26 The first prong the court must examine is the likelihood of Gilmore succeeding on  
27 the merits. As set forth in the motion for summary judgment filed in State Court, (which  
28 the Seabrooks did not oppose), facts are sufficiently set forth to establish that the funds

1 were embezzled by the Seabrooks, and that a constructive trust exists.

2 **1. Embezzlement**

3 Exhibits to the motion for partial summary judgment show checks signed by Mrs.  
4 Seabrook that are drawn upon Gilmore Construction accounts. The checks are made  
5 payable to various credit cards held in the names of Mr. and Mrs. Seabrook.

6 The Seabrooks have invoked their Fifth Amendment right against self-  
7 incrimination when questioned about the allegations in the complaint. The questions were  
8 posed during the creditor meetings. Transcripts of the creditors meeting, during which the  
9 Seabrooks invoke the Fifth Amendment are attached as Exhibit "6" and "7".

10 Candidly there does not appear to be any defense the Seabrooks can raise in  
11 response to the embezzlement allegations. They cannot dispute that the stolen money was  
12 used to pay their credit card debts. They have admitted that items purchased on the credit  
13 cards were for their benefit. They also used the stolen money to pay for gifts for their  
14 children and even paid tuition for one of their child's education. (See transcript). It is  
15 more than a mere possibility that Gilmore will succeed on the merits in regards to  
16 establishing the embezzlement claim.

17 **2. Constructive Trust**

18 A constructive trust will arise and affect property acquisitions under circumstances  
19 where: (1) a confidential relationship exists between the parties; (2) retention of legal title  
20 by the holder thereof against another would be inequitable; and (3) the existence of such a  
21 trust is essential to the effectuation of justice. Locken v. Locken, 650 P. 2d 803, 98 Nev.  
22 369, 371 (1982).

23 The Seabrooks held a confidential relationship with Gilmore; Mrs. Seabrook as the  
24 company bookkeeper and Mr. Seabrook as the company's outside accountant. Mrs.  
25 Seabrook has access to the company's financial information; equally so Mr. Seabrook was  
26 charged with preparing the company's financial statements. The first prong is easily met.

27 The second prong is met by the Seabrooks retaining the funds they otherwise  
28 would not have had. The Seabrooks used Gilmore's money, rather than their own, to pay



1 for extensive credit card debt. If the Seabrooks did not steal money from Gilmore, they  
2 would have been required to use their earnings to pay their debts. Instead, by using  
3 Gilmore's money to pay their bills, the Seabrooks were able to use their earning to obtain  
4 assets they could then claim were exempt from execution. It is inequitable to allow the  
5 Seabrooks to live off stolen money, while using earnings to build up what would  
6 otherwise be protected assets.

7 The third prong is closely tied to the second. To effectuate justice, the court must  
8 not allow a thief to prosper by their crimes. By living off stolen money, the Seabrooks  
9 were able to use their earnings to increase their retirement. In essence Gilmore paid for  
10 the Seabrooks to live high on the hog, while they also saved for their retirement. To  
11 effectuate justice, the court must find a constructive trust exists over those funds.  
12 Otherwise a thief will know they can spend the stolen money to pay their bills, but put  
13 "their" earnings in exempt assets. Then they can keep their own money and leave the  
14 victim without recourse.

15 **B. Gilmore Will Suffer Irreparable Harm If Injunctive Relief Is Not Granted**

16 The Seabrooks have demonstrated a willingness to hide assets from the bankruptcy  
17 court. They failed to disclose that Mr. Seabrook was drawing unemployment benefits.  
18 They sold a vehicle but did not disclose the sale to the trustee. Only after they were  
19 questioned at a creditor's meeting by Gilmore did the sale come to light. It turned out  
20 they put those funds in an IRA (an exempt assets) apparently believing that would protect  
21 the funds. Now the trustee has learned a transfer into the IRA was made from the sale of  
22 a non-exempt asset.

23 Mrs. Seabrook has been collecting social security payments (an exempt asset),  
24 when she also requested Gilmore construction to pay her salary to a company owned by  
25 the Seabrooks. Gilmore did so, only after having her execute an independent contractor  
26 agreement. Checks were then made payable to Sealy Lake Consulting, LLC. This  
27 allowed Mrs. Seabrook to begin collecting social security, while also receiving a  
28 paycheck.

1 The Seabrooks have demonstrated a willingness to lie and cheat and steal in order  
2 to obtain money. They are lifelong criminals, having perpetrating embezzlement schemes  
3 for decades. There is little reason to believe they will not remove funds from purported  
4 exempt assets before this matter can be heard.

5 If a constructive trust is found to exists, Gilmore will actually be obtaining its own  
6 money. However if the Seabrooks are able to liquidate their purported "exempt assets"  
7 prior to judgment being entered, Gilmore will be deprived of the ability to collect the  
8 money.

9 The Ninth Circuit has stated;

10 "The basis of injunctive relief in the federal courts is irreparable harm and  
11 inadequacy of legal remedies." Our decision thus implied that the  
12 traditional test for a preliminary injunction is applied in a case seeking  
13 money damages, and that if the plaintiff had demonstrated that the  
14 defendant's assets would be dissipated and no relief would otherwise be  
15 available, the preliminary injunction would have been appropriate. In re  
16 Estate of Ferdinand Marcos, Human Rights Litigation v Estate of Ferdinand  
17 Marcos, 25 F.3d 1467 (1994).

18 The court must now balance the equities.

19 **C. Equity Favors Issuance of an Injunction**

20 The court next must weigh the effect the injunction will have on both sides.  
21 Gilmore was the victim of a carefully executed embezzlement scheme. Over \$600,000  
22 was stolen in a systematic and calculated manner. An injunction precluding the  
23 dissipation of purported exempt assets, will give Gilmore some hope of collecting perhaps  
24 half of the money the Seabrooks stole. If Gilmore is successful in its litigation, a  
25 constructive trust will be obtained over the assets, and they in reality will belong to  
26 Gilmore and not be an exempt asset.

27 Contrast this to the Seabrooks equity. They will have to pay back the money that  
28 was stolen. Mrs. Seabrook currently receives social security benefits, and Mr. Seabrook  
receives unemployment insurance. Those funds are sufficient to pay their monthly living  
expenses. They can make ends meet until trial in this matter. If a constructive trust is not



1 found to exists, then the exempt assets will remain theirs.

2       Gilmore submits when weighting the equity, the court should find the balance tips  
3 in Gilmore's favor. Gilmore faces the harm of being unable to collect the money that was  
4 stolen, the Seabrooks harm is they either have to pay it back, or wait a few months before  
5 they have access to the funds. In the meantime they have income with which to pay their  
6 monthly expenses.

7 **D. An Injunction Is In the Public Interest**

8       The public has an interest in seeing a victim of a crime made whole. Justice is  
9 served by preventing a criminal from prospering by their crimes. The public good is also  
10 served by holding a certified public accountant to a higher standard. One that assures the  
11 public that such a position of trust is not to be breached.

12 **E. Injunctive Relief is Appropriate**

13       Each of the prongs weighs in favor of issuing injunctive relief. The relief sought is  
14 narrow in nature. The Debtors will be precluded from transferring their purported exempt  
15 assets pending adjudication of this matter. The Debtor's have sufficient funds to make  
16 their monthly living expenses, based upon their current income (social security benefits  
17 and unemployment benefits). The restraining order would not preclude the use of funds  
18 received from the social security office. It only seeks to preclude the liquidation of  
19 purported exempt assets; upon which a constructive trust is likely to be found.

20       The funds would remain in their currently location so no harm will befall the  
21 debtors. The bond to be posted can be minimal in nature. It is unlikely the debtors would  
22 be liquidating their purportedly exempt assts, unless it was to hide the assets. Gilmore  
23 proposes a minimal bond of one thousand dollars.

24 **III CONCLUSION**


25       The court should issue a temporary restraining order to address the immediate  
26 threat of dissipation of assets. A preliminary injunction hearing should be set within 14  
27 days unless the court determines good cause exists to extend the temporary restraining  
28 order for a period greater than 14 days. In any event upon hearing the matter, a

1 preliminary injunction should issue precluding the Seabrooks from liquidating,  
2 transferring or encumbering their assets. Excluded from the request are the funds Mrs.  
3 Seabrook receives as current social security benefits proceeds, and unemployment  
4 insurance benefits Mr. Seabrook currently receives.

5 DATED this 27th day of July, 2013.

6 RESPECTFULLY SUBMITTED

7 McCULLOUGH, PEREZ & ASSOCIATES, LTD.  
8

9  
10 By   
11 CHRISTOPHER R. McCULLOUGH, ESQ.  
12 Nevada Bar #1138  
13 601 S. Rancho Drive, #A-10  
14 Las Vegas, Nevada 89106  
15 Attorney for Plaintiff  
16 Gilmore Construction, LLC  
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# **EXHIBIT 2**

# **EXHIBIT 2**

Ms. Hurtik,

Pursuant to our conversation yesterday, attached is a stipulation and order issuing a preliminary injunction. The injunction precludes the Seabrooks from liquidating their assets including what would otherwise be exempt assets. The order does not include funds they receive from social security or unemployment benefits.


Once you complete your review, if no changes are requested, please execute the document, so it may be filed today. If you have any questions you may speak with either myself or Mr. McCullough.

--

Sincerely,  
Frank Perez, Esq.

# **EXHIBIT 3**

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Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
August 07, 2013

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U.S. BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:

Robert H. Seabrook Jr. and  
Sondra G. Seabrook

)  
)  
) BK CASE NO.: 13-14004-mkn  
) CHAPTER: 7  
)  
) ADVERSARY CASE NO.: 13-01122-mkn  
)

GILMORE CONSTRUCTION, LLC.

Plaintiff,

v.

ROBERT H. SEABROOK, JR., AND  
SONDRA G. SEABROOK

Defendants.

)  
)  
) **STIPULATION AND ORDER FOR**  
) **THE ISSUANCE OF A PRELIMINARY**  
) **INJUNCTION PRECLUDING**  
) **ROBERT AND SONDRASEABROOK**  
) **FROM TRANSFERRING ASSETS**  
)

1 WHEREAS Plaintiff GILMORE CONSTRUCTION LLC (GILMORE), filed its  
2 adversary proceeding on July 16, 2013.

3 WHEREAS GILMORE filed a Motion for A Temporary Restraining Order and  
4 Preliminary Injunction Precluding Robert and Sondra Seabrook From Transferring Assets  
5 on July 29, 2013. The motion is set to be heard on an Order Shortening Time on August  
6 8, 2013, at 10:00 a.m.

8 WHEREAS Defendant ROBERT H. SEABROOK, JR., and SONDR A. G.  
9 SEABROOK have been served with a copy of the Complaint, Summons and papers filed  
10 in support of Plaintiff's motion for a Temporary Restraining Order and Preliminary  
11 Injunction Precluding Robert And Sondra Seabrook From Transferring Assets pursuant to  
12 the court's order dated July 30, 2013; along with their counsel.

14 WHEREAS Defendants ROBERT H. SEABROOK, JR. and SONDR A. G.  
15 SEABROOK, acting by and through their counsel, are willing to agree to the entry of this  
16 Stipulated Preliminary Injunction Order.

18 It is hereby ORDERED, ADJUDGED and DECREED as follows;

19 **FINDINGS**

- 20
- 21 1. This Court has jurisdiction over the subject matter of this case and over the parties.
  - 22 2. Venue lies properly with this Court.
  - 23 3. Plaintiff asserts that there is good cause for a preliminary injunction to issue  
24 precluding the Defendants from transferring, liquidating or encumbering any of  
25 their assets, including assets identified or claimed as "exempt assets" under either  
26 Nevada statutes of the US Bankruptcy code.  
27

1 4. Defendants stipulated to the entry of the following relief during the pendency of  
2 this action.

3 5. By stipulating to this preliminary injunction, Defendants do not admit or deny any  
4 of the allegations set forth in the Complaint or moving papers, other than  
5 jurisdictional facts.  
6

7 **DEFINITIONS**

8 For the purposes of this preliminary Injunction Order (“Order”), the following  
9 definitions apply;

10 1. “Assets” means any legal or equitable interest in , right to, or claim to, any  
11 and all real and personal property of Defendants, or held for the benefit of d  
12 personal property of Defendants, or held for the benefit of Defendants, including  
13 but not limited to chattel, goods, real estate, instruments, equipment, fixtures,  
14 general intangibles, effects, leaseholds, inventory, checks, notes, accounts, credits,  
15 receivables, shares of stock, contracts, and all cash and currency, or other assets, or  
16 any interest therein, wherever located. “Assets” specifically includes, but is not  
17 limited to any assets which would otherwise be deemed “exempt” assets under  
18 Nevada Statutes (including NRS 21.090) and under the US Bankruptcy Code and  
19 those identified as Exempt by the Defendants in there bankruptcy petition  
20 schedules, including amended schedules, on file in CASE NO.: 13-14004-mkn  
21

22 2. “Defendants” means Robert H. Seabrook and Sondra G. Seabrook.

23 3. “Retirement Accounts” are any Individual Retirements Account, ERISA,  
24 Keogh or other pension or profit sharing plans held for the benefit of the  
25  
26  
27  
28



Defendants. These include but are not limited to those disclosed by Defendants in the Schedules on file. The disclosed accounts are as follows;

Houldsworth & Co . 401 K account xxxx406	\$47,023.75
Franklin Templeton401k account xxxx0749	\$37,075.00
Ameritrade IRA account xxxx0880	\$32,918.34
Ameritrade IRA rollover account xxxx0199	\$112,030.31
Franklin Templeton401k account xxxxx0385	\$22,909.26

4. Non-Included Assets are social security benefits received by Sondra G. Seabrook and unemployment insurance payments received by Robert H. Seabrook.

IT IS THEREFORE ORDERED that Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity or device, are hereby preliminarily restrained and enjoined from transferring, liquidating or encumbering any of their assets, including assets identified or claimed as "exempt assets" under either Nevada statutes of the US Bankruptcy code.

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any corporation, partnership, subsidiary, division, affiliate, or other entity or device, and their officers, agents, servants, employees, and attorneys, and those persons acting in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby preliminarily restrained and enjoined from directly or indirectly:

A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, gifting, conveying, granting a lien or security interest or other interest in, or otherwise disposing of any funds,

1 real or personal property, accounts, contracts, consumer lists, or any other assets, or any  
2 interest therein, wherever located, including outside the United States, that are:

3 1. Owned or controlled, directly or indirectly, by any Defendant, in whole or in  
4 part, including, but not limited to, any assets held by, for, or in the name of any Defendant  
5 at any bank or savings or loan institution or credit or debit card processing agent, or with  
6 any broker-dealer, escrow agent, title company, commodity trading company, precious  
7 metal dealer, merchant account processor, or other financial institution, depository of any  
8 kind, or business entity;  
9

10 2. Held for the benefit of any Defendant;  
11

12 3. In the actual or constructive possession of any Defendant; or

13 4. Owned, controlled by, or in the actual or constructive possession of any  
14 corporation, partnership, limited liability company, or other entity directly or indirectly  
15 owned, managed, or controlled by any Defendant, or any other entity acting under a  
16 fictitious name owned by or controlled by any Defendant, including, but not limited to,  
17 any assets held by, for, or subject to access by, any Defendant, at any bank or savings or  
18 loan institution or credit or debit card processing agent, or with any broker-dealer, escrow  
19 agent, title company, commodity trading company, precious metal dealer, merchant  
20 account processor, or other financial institution, or depository of any kind;  
21

22  
23 IT IS FURTHER ORDERED that Defendants are not precluded from using Non-  
24 Included Assets.

25  
26 IT IS FURTHER ORDERED that this preliminary injunction does not preclude the  
27 Trustee from selling the Defendant's property located at 135 Grandview Court  
28

1 Seeley Lake, Montana 59868.

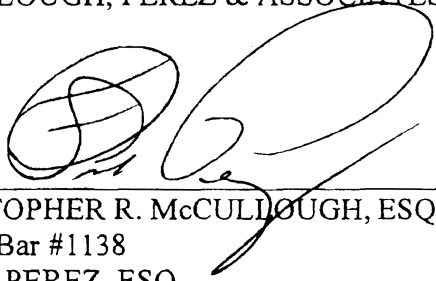
2 IT IS FURTHER ORDERED that this preliminary injunction becomes effective  
3 upon the Plaintiff posting a bond in the amount of One Hundred Dollars (\$100.00).


4 IT IS FURTHER ORDERED that this preliminary injunction is effective until the  
5 conclusion of this proceeding or further order of this court.

6  
7 IT IS FURTHER ORDERED that the hearing scheduled for August 8, 2013 is  
8 hereby vacated.

9 **IT IS SO ORDERED.**

10 McCULLOUGH, PEREZ & ASSOCIATES, LTD.

11  
12   
13  
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